

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HELEN MOAK,

No C-03-2951 VRW

Plaintiff,

ORDER

v

JO ANNE B BARNHART, Commissioner
of Social Security,

Defendant.

Plaintiff Helen Moak brings this action under 42 USC section 405(g), challenging the final decision of the Social Security Administration (SSA) denying her application for social security disability benefits. The parties have filed cross-motions for summary judgment. For the reasons stated herein, the court GRANTS plaintiff's motion for remand and DENIES defendant Jo Anne B Barnhart's motion for summary judgment.

Plaintiff is in her mid-forties. She has not completed high school. Her jobs include in-home aide to a quadriplegic individual, Safeway Stores courtesy clerk and waitress. On September 29, 2000, plaintiff filed an application for social security disability benefits claiming disability based on chronic

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1 muscle spasms in her "back, neck, arms, legs everywhere," AR 94,
2 carpal tunnel syndrome, weak knees, weak ankles, chronic neck and
3 back pain, pelvic pain, year-round allergies, asthma, depression,
4 high blood pressure, "retain water," overweight. Id. At time of
5 hearing, plaintiff reported her recent weight to be 300 lbs. AR 48.

6 The SSA denied plaintiff's request for benefits initially,
7 on reconsideration, on appeal and after a hearing before an
8 administrative law judge (ALJ). On May 2, 2003, the SSA's Appeals
9 Council denied plaintiff's request for review of the decision of the
10 ALJ, rendering the agency's decision final. AR 4-6. Before the
11 court is the record of proceedings before the SSA. The court must
12 determine whether to affirm or reverse the agency's decision or
13 remand the case back to the SSA for further proceedings.

14 The court's jurisdiction is limited to determining whether
15 the SSA's denial of benefits is supported by substantial evidence in
16 the administrative record. 42 USC § 405(g). A district court may
17 overturn a decision to deny benefits only if the decision is not
18 supported by substantial evidence or if the decision is based on
19 legal error. See Andrews v Shalala, 53 F3d 1035, 1039 (9th Cir
20 1995); Magallanes v Bowen, 881 F2d 747, 750 (9th Cir 1989).

21 In his eight-page decision, the ALJ reviewed the medical
22 evidence from treating and consulting physicians and concluded that
23 plaintiff's combination of impairments, while "severe" within the
24 meaning of 20 CFR § 416.921, did not meet the criteria for
25 "disability" within the meaning of the Social Security Act and its
26 implementing regulations, i e, "unable to do any substantial gainful
27 activity by reason of any medically determinable physical or mental
28 impairment which can be expected to result in death or which has

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1 lasted or can be expected to last for a continuous period of not
2 less than 12 months." 20 CFR § 404.1527.

3 The ALJ found that several of plaintiff's impairments were
4 "severe" within the meaning of 20 CFR § 416.921, including "chronic
5 low back pain with mild to moderate degeneration, a history of
6 asthma, hypertension and gastroesophageal reflux disease (GERD)
7 controlled with medication, asymptomatic hepatitis C infection,
8 bilateral carpal tunnel syndrome with scheduled release surgery and
9 a depressive disorder * * *." AR 15. In concluding that
10 plaintiff's impairments were not disabling, the ALJ stated "[t]he
11 medical evidence of record establishes that many of the claimant's
12 impairments are controlled with medication or asymptomatic, and that
13 her orthopedic impairments are among mild to moderate severity
14 [sic]." AR 16. The ALJ's decision discussed in some detail the
15 medical evidence in the record. Regarding orthopedic complaints, he
16 noted "[t]he claimant's treating physician indicates that the
17 claimant's chronic back pain represented with some findings on x-ray
18 supporting degenerative joint disease [but this disease] * * * was
19 at the early level so that the claimant was able to stand and walk
20 without complaints of back pain and the examination results were
21 essentially normal." Id. He also noted that a consulting medical
22 examiner for the SSA stated that "while the claimant does have
23 degenerative joint disease of her spine, she is not precluded from
24 all physical activities." AR 17.

25 Notably, the ALJ decision contains no reference to
26 plaintiff's testimony at the hearing. At the hearing held November
27 20, 2002, plaintiff (who was not represented) testified at length
28 about her physical and mental limitations. She testified, inter

1 alia that: she had to have her son help her put her socks and shoes
2 on and clean the house; she used a mobility cart when shopping in
3 stores; she could sit for an hour only "sometimes * * * [depending]
4 on how much pain I'm in," AR 50-51; she could stand and walk for
5 only a couple of minutes, after which her son would get her a
6 wheelchair and push her in a wheelchair "because I hurt too bad," AR
7 52; and she used a cane because she was afraid of her knee giving
8 out. Id.

9 The ALJ stated his responsibility vis-a-vis plaintiff's
10 contentions about pain thusly: "the undersigned must consider all
11 symptoms, including pain, and the extent to which these symptoms can
12 reasonably be accepted as consistent with the objective medical
13 evidence and other evidence * * *." AR 16. This is a legally
14 incorrect summary of an ALJ's responsibility when the claimant's
15 testimony about subjective pain symptoms appears to be in conflict
16 with the medical evidence in the record.

17 The law governing the ALJ's responsibilities in cases
18 involving excess pain is well-developed in this circuit. "Excess
19 pain" is "pain at a level above that supported by medical
20 findings." Chavez v Department of Health and Human Services, 103
21 F3d 849 (9th Cir 1996). If a claimant is able to produce objective
22 medical evidence of an underlying impairment, an ALJ may not reject
23 his subjective complaints based solely on lack of objective medical
24 evidence to corroborate the alleged severity of pain. Moisa v
25 Barnhart, 367 F3d 882, 885 (9th Cir 2004). If the ALJ finds the
26 claimant's pain testimony not to be credible, the ALJ "must
27 specifically make findings that support this conclusion." Id.
28 Absent "affirmative evidence that the claimant is malingering," the

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1 ALJ must provide clear and convincing reasons for rejecting the
2 claimant's testimony regard the severity of symptoms. Id.
3 "General findings are insufficient; rather, the ALJ must identify
4 what testimony is not credible and what evidence undermines the
5 claimant's complaints." Lester v Chater, 81 F3d 821, 834 (9th Cir
6 1996).

7 In a case in which the ALJ has improperly rejected the
8 claimant's testimony regarding her limitations, and the claimant
9 would be disabled if the testimony were credited, remand for the
10 purpose of having the ALJ make findings regarding that testimony is
11 normally not required. Lester, 81 F3d at 834. Here, however, the
12 ALJ's rejection of plaintiff's testimony is at best implicit, and,
13 moreover, it is apparent from the court's review of the
14 administrative record that there are good reasons to doubt
15 plaintiff's credibility.

16 For example, at the hearing the plaintiff told the ALJ
17 that she "used to do drugs but * * * quit doing that a long time
18 ago." AR 49. "How long ago?" the ALJ asked, to which plaintiff
19 answered "in the 80's for couple years and that was it." Id.
20 According to medical evidence in the record, however, plaintiff
21 reported to a mental health professional that she had used
22 methamphetamine not only in 1986, but also "briefly" in 1992 and
23 1996. AR 252. Treatment notes from Del Norte Community Health
24 Center dated May 2000 include the following notation: "The patient
25 states that she has been using IV drugs, specifically shooting up
26 crank and sharing a needle with one other individual. * * * She has
27 now left this person and has been clean for 2-1/2 months." AR 200.

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1 It is not the reviewing court's role to make a
2 determination about a disability claimant's credibility, nor does
3 the court undertake to do so in this case; the above example is
4 included only for the purpose of establishing that it would not be
5 appropriate to deem plaintiff's statements at the hearing about her
6 pain admitted, given plaintiff's contradictory statements
7 on another matter of medical importance apparent from the record.

8 This case is hereby ordered remanded to the SSA for the
9 purpose of reconciling plaintiff's testimony about her pain and
10 physical limitations with the medical evidence and making
11 appropriate findings about plaintiff's credibility as required by
12 the applicable Ninth Circuit precedents.

13 The clerk is directed to enter judgment in favor of
14 plaintiff and to close the file and terminate all pending motions.

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16 IT IS SO ORDERED.

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19 VAUGHN R WALKER
20 United States District Chief Judge
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